

HOUSE No. 1392

By Mr. Petersen of Marblehead, petition of Douglas W. Petersen and others relative to mercury containing products. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

PETITION OF:

Douglas W. Petersen	Cory Atkins
Susan C. Tucker	Christine E. Canavan
James B. Leary	Edward G. Connolly
Susan W. Pope	Michael E. Festa
William C. Galvin	Mathew C. Patrick
David Paul Linsky	Karen E. Spilka
Patricia A. Haddad	Jennifer M. Callahan
Brian Paul Golden	Antonio F. D. Cabral
Barbara A. L'Italien	Kevin G. Honan
Michael A. Costello	Kathleen M. Teahan
Philip Travis	Mark C. Montigny
Joyce A. Spiliotis	John A. Hart, Jr.
Jay R. Kaufman	Dianne Wilkerson
Paul J. Donato	Patricia D. Jehlen
Ruth B. Balser	Stephen Kulik
Peter V. Kocot	Ellen Story
Rachel Kaprelian	Steven A. Tolman
Timothy J. Toomey, Jr.	Kay Khan
Byron Rushing	Deborah D. Blumer
Robert M. Kozera	Geoffrey D. Hall
David M. Torrisi	Shirley Gomes
Frank I. Smizik	Mary E. Grant
Martha M. Walz	Alice K. Wolf
Carl M. Sciortino, Jr.	Lida E. Harkins
Thomas M. McGee	Thomas P. Kennedy
Theodore C. Spiliotis	Kathi-Anne Reinstein
Anthony J. Verga	Paul C. Casey
John D. Keenan	Peter J. Koutoujian
Barry R. Finegold	James B. Eldridge

David B. Sullivan	Robert P. Spellane
James R. Miceli	Alice Hanlon Peisch
John W. Scibak	Thomas J. O'Brien
Thomas A. Golden, Jr.	Geraldine Creedon
Mark J. Carron	Michael J. Rodrigues
Frank M. Hynes	Garrett J. Bradley
Anne M. Paulsen	Jeffrey Sánchez
Stephen M. Brewer	Patricia A. Walrath
Martin J. Walsh	Brian Knuuttila
William Lantigua	Elizabeth A. Malia
Susan C. Fargo	J. James Marzilli, Jr.
Mark V. Falzone	Louis L. Kafka
Daniel E. Bosley	Anne M. Gobi
Bruce J. Ayers	Harold P. Naughton, Jr.
Tom Sannicandro	Michael F. Rush
Steven M. Walsh	Walter F. Timilty
Robert K. Coughlin	
Denetrius J. Atsalis	

In the Year Two Thousand and Five.

AN ACT RELATIVE TO SAFER ALTERNATIVES FOR MERCURY CONTAINING PRODUCTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. *Whereas*, mercury poses a threat to human health
2 and the environment in Massachusetts due to high levels of mer-
3 cury in fish; and
4 *Whereas*, Ninety water bodies in Massachusetts have been
5 placed on the US Environmental Protection Agency's 2004 list of
6 Impaired Waters pursuant to Section 303D of the federal Clean
7 Water Act because of excessive levels of mercury in fish,
8 requiring the state Department of Environmental Protection to
9 prepare Total Maximum Daily Load plans to reduce the atmos-
10 pheric deposition of mercury into these water bodies; and

11 *Whereas*, The Department of Public Health has issued health
12 advisories with respect to fish consumption from ninety water
13 bodies in Massachusetts due to high levels of mercury in fish; and
14 has warned pregnant women, women of childbearing age, nursing
15 mothers, and children under the age of twelve not to eat any fresh-
16 water fish caught in the state of Massachusetts or any shark,
17 swordfish, king mackerel, tilefish, or steak tuna; and

18 *Whereas*, A major cause of mercury contamination in fish in
19 Massachusetts is man-made mercury emissions from solid waste
20 incinerators; and

21 *Whereas*, The New England Governors and the Eastern Cana-
22 dian Premiers in 1998 established a long term goal of virtually
23 eliminating mercury emissions in the region and in 2001 adopted
24 a Mercury Action Plan calling for a fifty percent reduction in mer-
25 cury emissions by 2003, a seventy-five percent reduction in mer-
26 cury emissions by 2010, and called for separation and recycling of
27 waste products containing mercury as a means of achieving those
28 goals; and

29 *Whereas*, Safer alternatives exist for many mercury-containing
30 products; for example studies prepared by the Lowell Center for
31 Sustainable Production for the Maine Department of Environ-
32 mental Protection in 2003, *An Investigation of Alternatives to*
33 *Mercury Containing Products and A Review of Thermostat Energy*
34 *Efficiency and Pricing*, found that there are cost-effective non-
35 mercury alternatives available on the market today for many mer-
36 cury-containing products, including thermostats, instruments,
37 measuring devices, switches, and relays; and therefore

38 *It is hereby resolved*, that the policy goals of this Act shall be
39 (1) to replace the use of mercury-added products with safer alter-
40 natives wherever feasible, (2) to prohibit the disposal of mercury-
41 containing waste products as solid waste, and (3) to promote and
42 ensure the proper collection, transportation and recycling and dis-
43 posal of all mercury-containing waste products with an emphasis
44 on using existing systems to achieve these ends.

1 SECTION 2. Section 2 of chapter 21H of the General Laws is
2 hereby amended by inserting the following definitions:—

3 “Battery”, an enclosed device or sealed container consisting of
4 a combination of one or more voltaic or galvanic cells, electrically
5 connected to produce energy.

6 “Button cell battery”, a button- or coin-shaped battery.

7 “Electric lamp”, the bulb or tube portion of a lighting device
8 specifically designed to produce radiant energy, most often in the
9 ultraviolet, visible, and infra-red regions of the electromagnetic
10 spectrum. Examples of common electric lamps include, but are
11 not limited to, incandescent, fluorescent, high intensity discharge,
12 and neon lamps.

13 “End of life motor vehicles” means any motor vehicle which is
14 sold, given or otherwise conveyed to a vehicle recycler or scrap
15 recycling facility for the purpose of dismantling, recycling and/or
16 disposal.

17 “Health care facility”, a health care facility as defined in sec-
18 tion nine C of chapter one hundred and twelve, and any hospital,
19 nursing home, extended care facility, long-term care facility, clin-
20 ical or medical laboratory, state health or mental institution, insti-
21 tution for the mentally ill or retarded, clinic, physician’s office, or
22 health maintenance organization.

23 “Manufacturer”, any person, firm, association, partnership, cor-
24 poration, governmental entity, organization, combination, or joint
25 venture which produces a product containing mercury or an
26 importer or domestic distributor of a product containing mercury
27 produced in a foreign country. In the case of a multi-component
28 product containing mercury the manufacturer is the last manufac-
29 turer to produce or assemble the product. If the multi-component
30 product is produced in a foreign country, the manufacturer is the
31 importer or domestic distributor. “Manufacturer” means any
32 person, firm, association, partnership, corporation, governmental
33 entity, organization, combination, or joint venture which is the last
34 person to produce or assemble a new vehicle that utilizes mer-
35 cury-added components, or in the case of an imported vehicle, the
36 importer or domestic distributor of such vehicle.

37 “Mercury-added battery”, a button cell or mercuric oxide bat-
38 tery to which the manufacturer intentionally introduces mercury
39 for the operation of the battery.

40 “Mercury-added vehicle component” means a component that
41 contains mercury and is part of and/or contained in a vehicle,
42 including but not limited to, switches, sensors, lights, headlamps,
43 navigational systems, screens, and brakes.

44 “Mercury-added formulated product”, a chemical product
45 which intentionally or unintentionally contains mercury, including
46 but not limited to, laboratory chemicals, cleaning products, cos-
47 metics, pharmaceuticals, and coating materials, that are sold as a
48 consistent mixture of chemicals.

49 “Mercury-added lamp”, an electric lamp to which the manufac-
50 turer intentionally introduces mercury for the operation of the lamp.

51 “Mercury-added novelty”, a mercury-added product intended
52 mainly for personal or household enjoyment or adornment
53 including items intended for use as practical jokes, figurines,
54 adornments, toys, games, cards, ornaments, yard statues and fig-
55 ures, candles, jewelry, holiday decorations, and items of apparel,
56 including footwear.

57 “Mercury-added product”, a product to which the manufacturer
58 intentionally introduces mercury, including, but not limited to,
59 button cell or mercuric oxide batteries, electric lamps, ther-
60 mostats, thermometers, automotive devices, electric switches,
61 medical or scientific instruments, electric relays, or other elec-
62 trical devices.

63 “Mercury-added switch” a switch installed in a motor vehicle
64 containing mercury including but not limited to light switches and
65 antilock braking systems and other switches containing mercury.

66 “Mercury-added thermostat”, a product or device that uses a
67 mercury switch to sense and control room temperature through
68 communication with heating, ventilating or air-conditioning
69 equipment. “Mercury-added thermostat” includes thermostats
70 used to sense and control room temperature in residential, com-
71 mercial, industrial and other buildings but does not include a ther-
72 mostat used to sense and control temperature as part of a
73 manufacturing process.

74 “Person” any natural or corporate person, whether public or pri-
75 vate, including corporations, societies, associations and partner-
76 ships and bodies politic and corporate, public agencies,
77 authorities, departments, offices and political subdivisions of the
78 commonwealth.

79 “Scrap recycling facility” a facility, location, device, or unit,
80 where machinery and equipment are utilized for processing and
81 manufacturing scrap metal into prepared grades and whose prin-

82 cipal product is scrap iron, scrap steel, or nonferrous metallic
83 scrap for sale for remelting purposes.

84 “Solid waste collector”, a person that accepts, collects or trans-
85 fers solid waste for purposes other than scrap recycling.

86 “Solid waste management facility”, an established site or
87 works, and other appurtenances thereto, which is, has been, or will
88 be used for the handling, storage, transfer, processing, treatment
89 or disposal of solid waste for purposes other than scrap recycling,
90 including all land, structures or improvements which are directly
91 related to solid waste activities.

92 “Vehicle in commerce” means any vehicle offered for sale by a
93 dealer, or registered (by state or in the United States) to be oper-
94 ated on public roads and highways.

95 “Vehicle recycler” means any individual or entity engaged in
96 the business of acquiring, dismantling or destroying six or more
97 vehicles in a calendar year for the primary purpose of resale of
98 their parts.

1 SECTION 3. Chapter 21H of the General Laws is hereby
2 amended by inserting after section 6 the following new sections:—

3 Section 6A. **Multi-State Clearinghouse.** The department is
4 authorized and directed to participate in the implementation of the
5 Interstate Mercury Education and Reduction Clearinghouse estab-
6 lished at the Northeast Waste Management Officials Association
7 to assist in carrying out the requirements of sections 6A through 6T
8 of this chapter and to help coordinate reviews of the manufac-
9 turers’ applications for phase-out exemptions, the collection
10 system plans, applications for alternative labeling/notification sys-
11 tems, education and outreach activities, and any other related
12 functions. The clearinghouse may also maintain a list of all prod-
13 ucts containing mercury, including mercury-added products; a file
14 on all exemptions granted by the states; a file of all the manufac-
15 turers’ reports on the effectiveness of their collection systems; and
16 a file of the certificates of analysis for certain products containing
17 mercury used by health care facilities.

18 Section 6B. **Notification.** (a) After six months from the effec-
19 tive date of this section no mercury-added product shall be offered
20 for final sale or use or distributed for promotional purposes in
21 Massachusetts without prior notification in writing by the manu-

22 manufacturer of the product to the department or to the Interstate Mer-
23 cury Education and Reduction Clearinghouse in accordance with
24 the requirements of this section. Such notification shall at a min-
25 imum include:

26 i. a brief description of the product to be offered for sale, use,
27 or distribution,

28 ii. the amount of and purpose for mercury in each unit of the
29 product,

30 iii. the total amount of mercury contained in all products manu-
31 factured by the manufacturer,

32 iv. the name and address of the manufacturer, and the name,
33 address, and phone number of a contact.

34 (b) Any mercury-added product for which federal law governs
35 notice in a manner that preempts state authority shall be exempt
36 from the requirements of this section.

37 (c) With the approval of the department, the manufacturer or a
38 trade group may supply the information required above for a
39 product category rather than an individual product. The manufac-
40 turer or trade group shall update and revise the information in the
41 notification whenever there is significant change in the informa-
42 tion or when requested by the department. The department may
43 define and adopt specific requirements in accordance with chap-
44 ter 30A of the general laws, as so appearing, for the content and
45 submission of the required notification.

46 (d) Public disclosure of confidential business information sub-
47 mitted to the department pursuant to this section shall be governed
48 by the requirements of section 10 of chapter 66 of the general
49 laws. Notwithstanding the requirements of the said act, the state
50 may provide the Interstate Clearinghouse with copies of such
51 information, and the department and the Interstate Mercury Edu-
52 cation and Reduction Clearinghouse may compile or publish
53 analyses or summaries of such information provided that the
54 analyses or summaries do not identify any manufacturer or reveal
55 any confidential information.

56 (e) The department shall protect trade secrets.

57 Section 6C. ***Restriction on Sale of Certain Products.*** (a) No
58 later than one year after the effective date of this section, no mer-
59 cury-added novelty shall be offered for final sale or use or distrib-
60 uted for promotional purpose in this state if the seller knows or

61 has reason to know that the product contains mercury. Manufac-
62 turers that produce and sell mercury-added novelties shall notify
63 retailers about the provisions of this section and how to recycle or
64 dispose of the remaining inventory properly.

65 (b) Within 6 months of the effective date of this section, no
66 school in this state shall use or purchase for use in a primary or
67 secondary classroom elemental mercury, mercury compounds, or
68 mercury-added instructional equipment and materials, except
69 measuring devices and thermometers for which no adequate sub-
70 stitute exists which are used in school laboratories.

71 Section 6D. *Requiring Use of Safer Alternatives to Mercury-*
72 *containing Products.*

73 (a) **Mercury-added thermostats.** No later than one year fol-
74 lowing the effective date of this section, a person may not sell or
75 offer to sell or distribute for promotional purposes a mercury-
76 added thermostat except for a thermostat used by a blind or visu-
77 ally impaired person.

78 (b) **Instruments and measuring devices.** No later than one
79 year following the effective date of this section, a person may not
80 sell or offer to sell or distribute the following mercury-added
81 products in Massachusetts:

- 82 (1) A barometer;
- 83 (2) An esophageal dilator, bougie tube or gastrointestinal tube;
- 84 (3) A flow meter;
- 85 (4) A hydrometer;
- 86 (5) A hygrometer or psychrometer;
- 87 (6) A manometer;
- 88 (7) A pyrometer; or
- 89 (8) A sphygmomanometer; or
- 90 (9) A basal thermometer

91 This subsection does not apply to the sale of a mercury-added
92 product if use of the product is a federal requirement.

93 (c) **Mercury switches and relays.** No later than one year fol-
94 lowing the effective date of this section, a person may not sell or
95 offer to sell or distribute a mercury switch or mercury relay indi-
96 vidually or as a product component. This prohibition does not
97 apply if the switch or relay is used to replace a switch or relay that
98 is a component in a larger product in use prior to January 1, 2006
99 and there is no mercury free alternative available for that compo-
100 nent and one of the following applies:

101 (1) The larger product is used in manufacturing; or

102 (2) The switch or relay is integrated and not physically separate
103 from other components of the larger product.

104 This subsection does not apply to the sale of a mercury switch
105 or mercury relay if use of the switch or relay is a federal require-
106 ment.

107 **(d) New products.** No later than one year following the effec-
108 tive date of this section, no person shall without the written
109 approval of the department sell or offer to sell or distribute for
110 promotional purposes a mercury-added product or mercury-added
111 formulated product in Massachusetts that was not available in
112 Massachusetts on the effective date of this section, excepting the
113 use of mercury in a product that is required by the federal govern-
114 ment. The department shall not grant such approval if a feasible
115 safer alternative to the mercury-containing product is available for
116 use to accomplish the same purpose.

117 **(e) Additional products.** The department shall annually review
118 information on mercury-added products and may by regulation
119 ban the sale of mercury-added products in addition to those
120 addressed by this chapter upon a determination by the department
121 that (a) said ban is necessary to protect public health, safety, or the
122 environment and (b) that a non-mercury added safer alternative is
123 available.

124 Section 6E. *Automobile mercury phaseout.*

125 (a) A person may not sell a motor vehicle manufactured on or
126 after January 1, 2007, containing one or more mercury added light
127 switches.

128 (b) A person may sell a motor vehicle manufactured on or after
129 January 1, 2007, with a mercury added vehicle component, other
130 than a mercury added light switch, only if that person has created
131 a collection plan pursuant to section 6L of this chapter.

132 (c) Upon enactment of this section, a person shall not sell or
133 distribute a mercury added light switch for installation in a motor
134 vehicle.

135 (d) When mercury added light switches in a vehicle in com-
136 merce require replacement they shall be replaced with non mer-
137 cury alternatives.

138 (e) Within one year of enactment of this section, no person
139 shall crush or cause to be crushed or otherwise arrange for an end
140 of life motor vehicle to be crushed without first having removed

141 any and all mercury added vehicle components. A scrap recycling
142 facility may agree to accept an end of life motor vehicle that has
143 not been flattened, crushed, or baled, containing mercury added
144 vehicle components, in which case the scrap recycling facility is
145 responsible for the proper removal, recycling, transporting,
146 storage, and general containment of all mercury added compo-
147 nents in accordance with chapter 21C and 310 CMR 30.000.

148 (f) Any person or facility removing a mercury added compo-
149 nent in either a vehicle in commerce or an end of life vehicle shall
150 manage the mercury added component in accordance with chap-
151 ter 21C and 310 CMR 30.000 and safely contain and ship or trans-
152 port the mercury added component pursuant to the collection plan
153 required in section 6L.

154 Section 6F. **Exemptions.** (a) Manufacturers of a mercury-added
155 product may apply to the department for an exemptions set forth
156 in section 6D and 6E for a product or category of products.

157 (b) Applications for exemptions must (1) document the basis
158 for the requested exemption or renewal of exemption; (2) describe
159 how the manufacturer will ensure that a system exists for the
160 proper collection, transportation, and processing of the product(s)
161 at the end of their useful life; (3) document the readiness of all
162 necessary parties to perform as intended in the planned system
163 and (4) demonstrate that there is no technically feasible safer
164 alternative to the mercury-added product.

165 (c) The department may grant with modifications or conditions
166 an exemption for a product or category of products if it finds that:
167 (1) a system exists for the proper collection, transportation, and
168 processing of the mercury-added product; and (2) each of the
169 following criteria are met:

170 (i) use of the product is beneficial to the environment or protec-
171 tive of public health or public safety;

172 (ii) there is no technically feasible safer alternative to use of
173 mercury in the product; and

174 (iii) there is no comparable non-mercury-added product avail-
175 able at reasonable cost.

176 (3) In determining whether to grant an exemption, the depart-
177 ment shall consider whether the product that would substitute for
178 the mercury-added product would be less energy efficient than the
179 mercury-added product.

180 (4) In determining whether to grant an exemption, the depart-
181 ment shall consider whether an exemption is necessary to comply
182 with federal or state energy efficiency goals or requirements.

183 (d) Prior to issuing an exemption the department shall consult
184 with neighboring states and regional organizations to promote
185 consistency. The department shall avoid, to the extent feasible,
186 inconsistencies in the implementation of this section. Upon reap-
187 plication by the manufacturer and findings by the department of
188 continued eligibility under the criteria of this section and of com-
189 pliance by the manufacturer with the conditions of its original
190 approval, an exemption may be renewed one or more times and
191 each renewal may be for a period of no longer than four years.

192 Section 6G (a) **Labeling**. No later than one year after the effec-
193 tive date of this section, every manufacturer of mercury-added
194 products shall ensure that such products and their packaging are
195 labeled in a manner to clearly inform purchasers that mercury is
196 present in the item and that the item may not be disposed of or
197 placed in a waste stream destined for disposal or sent for recycling
198 unless the mercury is reused, recycled, or properly disposed of as
199 a hazardous waste or otherwise managed to ensure that the mer-
200 cury does not become mixed with other solid waste or wastewater.
201 Every manufacturer shall inform purchasers of how to access sys-
202 tems for the collection, transportation and recycling of mercury-
203 added products. Where a mercury-added product is a component
204 of another product, the product containing the component and the
205 component must both be labeled. The label on the product con-
206 taining a mercury-added component shall identify the component
207 with sufficient detail so that it may be readily located for removal.
208 Labels affixed to the product shall be constructed of materials that
209 are sufficiently durable to remain legible for the useful life of the
210 product.

211 (b) **Labeling for Specific Products**. (1) Labeling of appliances
212 (commonly called white goods) sold in a store where the appli-
213 ance is on display shall meet all requirements of this section
214 except that no package labeling is required.

215 (2) Labeling of button cell batteries shall meet all requirements
216 of this section except that no product labeling is required.

217 (3) Labeling of motor vehicles as well as nonmotorized travel
218 trailers and truck campers shall meet all requirements of this sec-

219 tion except that the mercury-added components are not required to
220 be labeled. A doorpost label shall list the mercury-added compo-
221 nents that may be present in the vehicle.

222 (c) **Written Advisory to Purchaser.** No person shall offer a mer-
223 cury-added product for final sale or use or promotional purposes
224 to an address in Massachusetts unless the purchaser or recipient at
225 the point of sale is clearly advised in writing that the product con-
226 tains mercury and that the item may not be disposed of, placed in
227 a waste stream destined for disposal, or sent for recycling until the
228 mercury is reused, recycled, or properly disposed of as a haz-
229 ardous waste or otherwise managed to ensure that the mercury
230 does not become mixed with other solid waste or wastewater. This
231 requirement applies to all transactions where the purchaser or
232 recipient is unable to view the labels on the package or the
233 product prior to purchase or receipt, including but not limited to,
234 catalogue, telephone and internet sales.

235 (d) **Labeling Alternatives.** A manufacturer may apply to the
236 department for an alternative to the requirements of subsection (a)
237 where strict compliance with the requirements is not feasible; or
238 where the proposed alternative would be at least as effective in
239 providing pre-sale notification of mercury content and in pro-
240 viding instructions on proper disposal. Applications for an alterna-
241 tive to the requirements of subsection (a) must (1) document the
242 justification for the requested alternative; (2) describe how the
243 alternative ensures that purchasers or recipients of mercury-added
244 products are made aware of mercury content prior to purchase or
245 receipt; (3) describe how a person discarding the product will be
246 made aware of the need for proper handling to ensure that it does
247 not become part of solid waste or wastewater; (4) document the
248 readiness of all necessary parties to implement the proposed alter-
249 native; and (5) describe the performance measures to be utilized
250 by the manufacturer to demonstrate that the alternative is pro-
251 viding effective pre-sale notification and pre-disposal notification.
252 The department may grant, deny, modify, or condition a request
253 for an alternative to the requirements of subsection (a) and
254 approval of an alternative. Such an approval shall be for a period
255 of not more than two years and may, upon continued eligibility
256 under the criteria of this section and compliance with the condi-
257 tions of its prior approval, be renewed at two-year intervals. Prior

258 to approving an alternative, the department shall consult with
259 neighboring states and regional organizations to insure that its
260 labeling requirements are consistent with those of other govern-
261 ments in the region.

262 (e) **Federal Labeling Exemption.** No person shall sell, offer for
263 sale, or offer for promotional purposes in the commonwealth a
264 mercury-added product, unless the product bears the labels
265 required by subsection (a) or meets the requirements of an alterna-
266 tive notification procedure under subsection (d). The labeling
267 requirement in subsection (a) shall not apply to any mercury-
268 added product for which federal law governs labeling in a manner
269 that preempts state authority.

270 Section 6H. **Disposal Ban.** (a) No person shall knowingly dis-
271 pose of mercury-added products in any manner other than by their
272 recycling or disposal as hazardous waste.

273 (b) When a mercury-added product is removed from service,
274 the mercury in the item must be source separated for reuse or
275 recycling, stabilized for retirement, or otherwise managed to pre-
276 vent its release into the environment. No person shall knowingly
277 send a multi-component product that contains mercury to a scrap
278 recycling facility for recycling without first removing the mer-
279 cury-added product(s). Notwithstanding the foregoing, a scrap
280 recycling facility may agree to accept a multi-component product
281 (which has not been intentionally flattened, crushed, or baled)
282 knowing it contains mercury-added product(s), in which case the
283 scrap recycling facility shall be responsible for removing such
284 product(s). This subsection shall not apply to households dis-
285 posing of mercury-added products.

286 (c) The provisions of this section shall take effect no later than
287 one year after the effective date of this section.

288 Section 6I. **Solid Waste Collectors.** A solid waste collector
289 shall refuse to collect the contents of a solid waste container that
290 said collector knows or reasonably should know contains one or
291 more mercury-added products, unless such solid waste is collected
292 for the purposes of being reused, recycled, or properly disposed of
293 as a hazardous waste or otherwise managed to ensure that the mer-
294 cury does not become mixed with other solid waste or waste
295 water.

296 Section 6J. ***Notification and Inspection at Solid Waste Collec-***
297 ***tion Facilities.*** (a) An owner or operator of a solid waste manage-
298 ment facility shall refuse to accept for disposal the contents of a
299 solid waste container that said owner or operator knows or reason-
300 ably should know contains one or more mercury-added products,
301 unless such solid waste is accepted for the purposes of being
302 reused, recycled, or properly disposed of as a hazardous waste or
303 otherwise managed to ensure that the mercury does not become
304 mixed with other solid waste or waste water.

305 (b) All owners and operators of solid waste management facili-
306 ties shall have appropriate notification and inspection procedures
307 in place designed to prohibit mercury-added products from being
308 disposed of at such facility. At a minimum, said owner or operator
309 shall implement the following mechanisms:

310 (i) Posting of signs at the facility providing notice of the prohi-
311 bition of the disposal and incineration of mercury-added products;

312 (ii) Written notification to or contractual agreements with the
313 facility's customers, providing notice of the prohibition of the dis-
314 posal and incineration of mercury-added products;

315 (iii) Implementation of a procedure approved by the department
316 for periodically monitoring incoming wastes to detect the pres-
317 ence of mercury-added products at the facility and practice of sep-
318 aration of observed mercury-added products, for return to the
319 generator, recycling, or disposal as hazardous waste.

320 (c) An owner or operator of a solid waste management facility
321 shall not be found to have failed to refuse to accept for disposal
322 the contents of a solid waste container in violation of subsec-
323 tion (a) if it has complied with the provisions of subsection (b).

324 Section 6K. ***Collection System.*** (a) Within one year of the
325 effective date of this section, every manufacturer of mercury-
326 added products that have been or may be sold or offered for sale
327 or promotional purposes in the commonwealth shall ensure that
328 the proper collection, transportation and recycling of mercury-
329 added products occurs in the commonwealth by: (1) utilizing
330 existing collection systems through which the used mercury-added
331 products sold or offered for sale by that manufacturer can be
332 returned for recycling or proper disposal; and / or (2) establishing
333 and funding, directly or with the use of third parties, a collection
334 system through which the used mercury-added products sold or

335 offered for sale by that manufacturer can be returned for recycling
336 or proper disposal.

337 (b) Where a mercury-added product is a component of another
338 product, the collection system must provide for removal and col-
339 lection of the mercury-added component or collection of both the
340 mercury-added component and the product containing it.

341 (c) Every manufacturer of mercury-added products sold or
342 offered for sale or promotional purposes in the commonwealth
343 shall be financially responsible for such collection and recycling
344 systems. All collection and recycling under subsection (a) shall be
345 conducted in a manner so as to prevent the release of mercury to
346 the environment and must be in full compliance with all applic-
347 able local, state and federal regulations. Every manufacturer of
348 mercury-added products sold or offered for sale or promotional
349 purposes in the commonwealth either on its own or in concert
350 with other persons shall submit a collection plan to the department
351 and receive plan approval therefrom. As part of the approval
352 process, the department shall ensure that all Massachusetts resi-
353 dents have access to mercury collection and recycling systems
354 that are convenient, comprehensive, and cost-effective. The
355 department shall develop requirements for said plans. Said plans
356 shall include, at a minimum, targeted capture rates for mercury-
357 added products or components.

358 (d) Mercury-added formulated products intended to be totally
359 consumed in use, such as reagents, cosmetics, pharmaceuticals,
360 and other laboratory chemicals, shall be exempt from the require-
361 ments of this section.

362 Section 6L. *Collection system for automobile mercury.* No
363 later than one year following the effective date of this section, no
364 person shall crush or cause to be crushed or otherwise arrange for
365 an end of life motor vehicle to be crushed without first having
366 removed any and all mercury added components.

367 (a) A scrap recycling facility may agree to accept an end of life
368 motor vehicle that has not been flattened, crushed, or baled, con-
369 taining mercury added components, in which case the scrap recy-
370 cling facility is responsible for the proper removal, recycling,
371 transporting, storage, and general containment of all mercury added
372 components in accordance with chapter 21C and 310 CMR 30.000.

373 (b) Any person or facility removing a mercury added compo-
374 nent in either a vehicle in commerce or an end of life vehicle shall
375 manage the mercury added component in accordance with chap-
376 ter 21C and 310 CMR 30.000 and safely contain and ship or trans-
377 port the mercury added component to a manufacturer facility
378 established under Section 4(a)(1) of this act.

379 (c) No later than one year of the effective date of this section the
380 manufacturers of motor vehicles sold in Massachusetts that contain
381 mercury added components shall as a group, or individually, create,
382 implement, comply and file with the department, a plan that
383 describes a system for the proper removal, recycling, transportation,
384 storage, and general containment of all mercury added components
385 in accordance with chapter 21C and 310 CMR 30.000.

386 (d) This plan shall provide at a minimum for:

387 1. The establishment and maintenance of facilities geographi-
388 cally located to serve all areas of the state where all mercury
389 added components may be removed or transported. These facili-
390 ties shall:

391 (a) Receive and accept all mercury added components removed
392 by dismantlers, vehicle recyclers, scrap facilities, and any and all
393 other persons removing mercury added components from auto-
394 mobiles.

395 (b) Service vehicles in commerce containing mercury added
396 components for the removal, collection, and recovery of mercury
397 added components and replacement with a non mercury alterna-
398 tive, where requested by consumer. This shall be at no cost to the
399 consumer;

400 (c) These facilities shall be managed in accordance with
401 chapter 21C and 310 CMR 30.000.

402 (d) Information, training, and other technical assistance to all
403 facilities removing mercury added components such that the safe
404 removal, recycling, transportation, storage and general containment
405 of mercury are achieved. The information provided must include
406 information identifying the make, model, and year of vehicles con-
407 taining mercury added components, a description of the component,
408 and the location in the automobile of the component.

409 2. Reasonable payments shall be made to those persons and
410 facilities removing mercury added components for labor, ship-
411 ping, and containment costs associated with the removal of such

412 components. Acceptable payment rates may be those established
413 by the manufacturer for the removal and replacement of said com-
414 ponents under the manufacturer/dealer warranty program. The
415 payment schedule shall be submitted and approved by the joint
416 committee on natural resources and agriculture 1 year after the
417 effective date of this act and annually thereafter.

418 3. A plan to store and recycle the mercury added component
419 collected and recovered from the facilities.

420 (a) This plan shall not require those persons removing the mer-
421 cury added components to segregate such components by manu-
422 facturer;

423 (b) After a plan is filed with the department each manufacturer
424 shall thereafter certify to the department on an annual basis, in
425 writing, on a form prescribed by the department, that it is imple-
426 menting the plan in accordance with the requirements of this
427 chapter.

428 (c) No later than one year following the effective date of this sec-
429 tion, and annually thereafter manufacturers shall report to the depart-
430 ment and joint committee on natural resources and agriculture:

431 a. The number of each mercury added component removed and
432 collected;

433 b. Where and how the components are stored, recycled or oth-
434 erwise disposed of;

435 c. An estimated amount of mercury collected from mercury
436 added components.

437 d. Makes, models, and years of the automobiles containing
438 mercury added components.

439 The department shall evaluate the compliance of all persons
440 subject to this chapter by conducting audits, inspections or imple-
441 menting other compliance measures deemed appropriate by the
442 department. The department shall report to the Committee on Nat-
443 ural Resources once every two years thereafter on the results of
444 the department's compliance evaluation activities.

445 Section 6K. ***Disclosure for Mercury-Added Formulated Prod-***
446 ***ucts.*** That are Used in Healthcare Facilities. Within six months of
447 the effective date of this section, every manufacturer of mercury-
448 containing products used in health care facilities, as defined in
449 section two of this chapter, shall provide each such facility and the
450 department with a certificate of analysis documenting the mercury

451 content of any such product containing more than one part per bil-
452 lion of mercury. Such formulated products include, but are not
453 limited to, acids; alkalis; bleach; materials used for cleaning, in
454 maintenance, or for disinfection; pharmaceutical products; stains;
455 reagents; preservatives; fixatives; buffers; and dyes. The certifi-
456 cate of analysis shall report the result of an analysis performed for
457 mercury on a specific lot or batch of the mercury-added formu-
458 lated product. The batch or lot number of the product shall be
459 clearly identified on the product and on the certificate of analysis.
460 The department may review the data contained in the certificate of
461 analysis, in consultation with the manufacturer, and take appro-
462 priate action to require the manufacturer to eliminate or reduce the
463 mercury content of the product.

464 Section 6L. ***Limitations on the Use of Elemental Mercury.***
465 Within six months of the effective date of this section, no person
466 shall sell or provide elemental mercury to another person in this state
467 without providing a material safety data sheet to the purchaser, as
468 defined in 42 U.S.C. section 11049, and requiring the purchaser or
469 recipient to sign a statement that the purchaser: (a) will use the mer-
470 cury only for medical, dental amalgam dispose-caps, research, or
471 manufacturing purposes; (b) understands that mercury is toxic and
472 that the purchaser will store and use it appropriately so that no
473 person is exposed to the mercury; and (c) will not place or allow
474 anyone under the purchaser's control to place the mercury or
475 cause the mercury to be placed in solid waste for disposal or in a
476 wastewater disposal system.

477 Section 6M. ***Public Education and Outreach.*** (a) The depart-
478 ment shall establish a means of addressing consumer inquiries and
479 complaints and a public education program to assure the wide-
480 spread dissemination of information concerning the purpose of
481 this section. Such public education program shall include, but not
482 be limited to, information regarding source reduction, recycling
483 programs, and collection systems for mercury added products
484 through one or more published reports and one or more forms of
485 electronic media. The department shall work cooperatively with
486 businesses, including but not limited to, building contractors and
487 the owners of multi-unit office or residential buildings.

488 (b) The department shall cooperate with the neighboring states
489 and provinces and regional organizations in the Northeastern U.S.

490 and Canada on developing outreach, assistance, and education
491 programs, where appropriate.

492 (c) The department may develop an awards program to recog-
493 nize the accomplishments of manufacturers, municipalities, solid
494 waste management facilities, solid waste recycling facilities,
495 household hazardous waste collection facilities, citizens, or others
496 who go beyond the minimum requirements in this legislation or in
497 other mercury-related programs and excel at reducing or elimi-
498 nating mercury in air emissions, solid waste, and wastewater dis-
499 charges.

500 (d) To facilitate compliance with the disposal ban, the depart-
501 ment shall prepare and publish best management practice guide-
502 lines for dental offices and laboratories.

503 (e) The department shall, no later than July 1 each even-num-
504 bered year, make available to the public information concerning
505 the amount of mercury diverted from the solid waste stream that
506 would otherwise be sent to solid waste management facilities for
507 disposal or incineration.

508 Section 6N. ***State Procurement Preferences for Low or Non-***
509 ***Mercury-Added Products.*** Within six months of the effective date
510 of this section, notwithstanding other policies and guidelines for
511 the procurement of equipment, supplies, and other products, the
512 state procurement officer, the state university system, and state
513 agencies shall not purchase any mercury-added product until such
514 time as said officer, university system, or agency demonstrates to
515 the satisfaction of the department that alternatives have been fully
516 analyzed and are not cost-effective or available. The department
517 shall consider whether the product that would substitute for the
518 mercury-added product would be less energy efficient than the
519 mercury-added product. No later than September 1 of each year,
520 the department shall submit a written report to the legislature on
521 the categories and quantities of alternatives to mercury-added
522 products purchased in the prior fiscal year and outline the steps
523 taken to investigate and purchase alternatives to mercury-added
524 products. Notwithstanding any general or specific law to the con-
525 trary, all state agencies and the university system shall comply
526 with the United States Environmental Protection Agency's Energy
527 Star Program, and in so doing shall recycle or stabilize for retire-
528 ment mercury-added lamps and other mercury-added products
529 used by the state.

530 Section 6O. **Dental Insurance.** State dental insurance contracts
531 negotiated after the effective date of this section shall provide
532 equal coverage for non-mercury fillings and mercury amalgam
533 fillings at no additional expense to the state employee.

534 Section 6P. **Regulations.** (a) The department shall adopt rules,
535 regulations, procedures and standards as may be necessary for the
536 implementation of sections 6A through 6T of this chapter. The
537 department shall consider simplifying and clarifying the rules and
538 regulations governing collection, transportation, storage, and man-
539 agement of discarded mercury, mercury-added products, and mer-
540 cury-added formulated products.

541 (b) The department shall promulgate regulations under this sec-
542 tion which are consistent with the federal Mercury-Containing and
543 Rechargeable Battery Management Act at sections 14302 through
544 14336 of chapter 42 of the United States Code.

545 Section 6Q. **Fees.** The department shall assess one or more
546 fees, pursuant to the provisions of section 18 of chapter 21A,
547 which shall be payable by manufacturers, which shall cover the
548 full costs incurred by the department for the preparation said regu-
549 lations, for the review of proposed plans for collection and recy-
550 cling, for other related compliance costs, and for all costs related
551 to implementation of sections 6A through 6T of this chapter.

552 Section 6R. **Review.** The department shall, in consultation, with
553 the Conference of the New England Governors/Eastern Canadian
554 Premiers Environment Committee and with the Northeast Waste
555 Managers Officials Association, review the effectiveness of sec-
556 tions 6A through 6T of this chapter no later than four years after
557 its adoption and may provide a report based upon that review to
558 the Governor and the legislature. The report shall review the
559 effectiveness of these programs and may contain recommenda-
560 tions for improvements. As part of this review, the department
561 shall evaluate the effectiveness of the collection systems estab-
562 lished under section 6K and 6L and determine whether additional
563 state authority, performance standards, or targeted recovery rates
564 are needed to improve those systems.

1 SECTION 4. Section 8 of chapter 21H of the General Laws, as
2 so appearing, is hereby amended by inserting after the first
3 appearance of the word “violation”, in line 7, the following:—

4 “; except that any household that violates section six C of this
5 chapter, or any rule, regulation, or order, issued or adopted under
6 that provision shall not be subject to a civil penalty.”

1 SECTION 5. This act shall take effect on January first, two
2 thousand and seven.